IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9070 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT PANCHAYAT - Petitioner(s)

Versus

NARANBHAI LAXMANBHAI SONDARVA & 4 - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner No(s).: 1.

MR BS PATEL for Respondent No(s).: 1.

MRS RANJAN B PATEL for Respondent No(s).: 1.

MR KL PANDYA A.G.P. for Respondent No(s).: 2, 3,4.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 27/06/2005

ORAL JUDGMENT

1. Though served none appears on behalf of respondent no. 1. Earlier Mr. B.S. Patel was appearing on behalf of respondent no. 1, but subsequently he retired from the matter. Hence, the matter is taken for final hearing today.

2. This petition is directed against the order dated 16th October, 1999 passed by the Labour Court, Junagadh in I.D. Complaint No. 52/99, whereby the Labour Court has granted ad-interim relief in terms of para 7 (E) & (F) of the application.

3. The short facts of the case are that the respondent workman was since last 14 years serving at village Kansari and Chanchkvad and vide order dated 29th July, 1998 he was transferred to Gir Gadhada. Being aggrieved by the said order of transfer, the respondent workman preferred Civil Suit No. 49/98 before the Civil Judge (S.D.) Veraval. The learned Judge vide order dated 5th August, 1998 passed an ex-parte order in favour of the respondent workman. Thereafter the learned Judge after hearing the application at Exh. 5, vacated the ex-parte interim order, vide order dated 15th July, 1999.

3.1. Being aggrieved by the said order the respondent workman preferred Civil Misc. Appeal No. 136 of 1999 which also came to be dismissed vide order 29th September, 1999. The respondent workman thereafter filed Revision Application No. 1500/99 before this Court, which also came to be rejected vide order dated 7th October, 1999. Having lost before the Lower Courts & before this Court, the respondent workman was relieved from the service vide order dated 12th October, 1999.

3.2. On being relieved from the service, the respondent

workman under Section 33-A of the Act filed I.D. complaint No. 52/99, before the Labour Court, Junagadh whereby the Labour Court without considering the fact that he had disclosed the material fact had passed an order in favour of the respondent. Hence, this petition.

4. Mr. Hathi learned advocate for the petitioner Panchayat has submitted that the respondent workman has obtained the impugned order from the Labour Court after suppressing the material facts which were within the knowledge of the respondent workman. He has, therefore, submitted that it is nothing but a mere abuse of process of law. Mr. Hathi has further submitted that Civil Suit being Civil Suit No.49 of 1998 is still pending for hearing before the lower Court. Thus, on these grounds, the impugned order is required to be quashed and set aside.

5. I have heard the learned advocate Mr. Hathi for the petitioner Panchayat and Mr. K.L. Pandya learned A.G.P. for respondents no. 2 to 4 and have perused the materials placed on record. While issuing notice, this Court vide order dated 22nd November, 1999 has stayed the implementation of the impugned order, which was confirmed by this Court vide order dated 22nd March, 2000. Thus, the impugned order has never come into operation. On perusing the record, it transpires that the respondent workman had failed before the Civil Court and before this Court. Even otherwise, the respondent workman had suppressed the material fact that he had filed Civil Suit before the lower

Court, which is pending for hearing. Therefore, in view of the facts and circumstances of the case, I am of the opinion that the Labour Court has committed an error in entertaining the application by granting status quo which is mandatory in nature. Thus, the contention raised by the petitioner Panchayat is required to be accepted *inasmuch* as it is nothing but an abuse of process of law.

6. For the foregoing reasons, the petition is allowed. The impugned order dated 16th October, 1999 passed by the Labour Court, Junagadh in I.D. Complaint No. 52/99 is quashed and set aside. However, it is made clear that if the respondent workman is desirous to proceed with the hearing of the said Civil Suit, the Labour Court, Junagadh shall not proceed with the proceedings unless the said Civil Suit is decided. But, if the respondent is desirous to proceed with the proceedings pending before the Labour Court, Junagadh, he shall withdraw the said civil suit pending before the Civil Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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